

5. The system of claim 3, wherein the rack has a depth and the cage rests within said rack so that said length of said cage at least partially overlaps said depth of said rack and a portion of said cage extends beyond said rack, the portion having a length and the sum of the length of the portion and the depth of said rack is less than or equal to substantially 36 inches.

### REMARKS

Applicants request reconsideration of the above-referenced Application in light of the amendments above and the remarks that follow. At the outset, Applicants wish to thank Examiner Nguyen and Examiner Carone for the time and courtesy shown Applicants and their representatives during the Examiner Interview of August 31, 1999.

The drawings are objected to for failing to include specific reference numerals. Applicants concede that because of the informal nature of the drawings, the numerals are not readily recognizable. However, Applicants note that reference numerals 12, 14 and 15 are shown in FIG. 2. Reference numerals 22 and 33 are in FIG. 4. Reference numeral 43 has been canceled from the description by way of amendment. Reference numeral 46 has been added by way of annexed Drawing Amendment. Reference numerals 48, 50, 59 and 61 are shown in FIG. 10. Reference numeral 65 is shown in FIG. 7. Reference numeral 240 has been deleted and reference numerals 1b, 224 and 1a have been added by way of the Drawing Amendment. To aid the Examiner, Applicants provide copies of the drawings as filed with the above-identified reference numerals circled.

Furthermore, the specification has been amended to identify the hole or slot as element number 32 as shown in FIG. 4 and the rack watering valve has been identified as element number 255 as shown in FIG. 12. The duplicative use of reference numerals has been corrected by consistently referencing the water bottle as a water bottle having a main body, by changing the border to be the previously identified flange, and to consistently reference the lock as lock 15, the rack as rack 212, the system as system 221, and the canopies as canopies 230. Applicants submit

that the objections to the drawings have been obviated by the amendments to the specification, the explanations above, and the accompanying Drawing Amendment. Accordingly, Applicants respectfully request withdrawal of the objection to the drawings.

The specification was objected to at page 13, line 1 because of the redundant reference to top 9. Page 13 has been amended to correct this typographical error.

Claims 3-7 are rejected under 35 U.S.C. §112 as being indefinite in its use of the terms "depth" and "length". Claims 3 and 5 have been amended to more consistently reference that the depth refers to the rack while the length refers to the cage. Applicants submit that the formal rejections to the claims have now been obviated and withdrawal of the rejection under 35 U.S.C. §112 is respectfully requested.

Turning to the substantive rejections, claims 1-7 are rejected under 35 U.S.C. §103(a) as being unpatentable over Lovitt. Applicants respectfully traverse the rejection.

In the Office Action, Lovitt is considered to disclose a caging system. However, it is conceded by the Examiner that the reference is silent regarding the cage dimensions. The Examiner argues that it would have been an obvious matter of choice to one skilled in the art to change the dimensions of the cage to fall within the range of a footprint having an area between 80 square inches and now 110 square inches.

As discussed and demonstrated during the Examiner interview, claims 1 and 3 as presently amended are directed to a multipurpose cage level barrier rodent cage for housing multiple species of rodents including a plurality of mice or rats in a ventilated rack and cage system. Furthermore, the size of the cage has a floor area between 80 square inches and 110 square inches. As discussed, there are two significant factors. First, that the cage involved is a cage level barrier cage for use in a ventilated rack and cage system and that the footprint (floor area) falls within a range of 80 square inches to 110 square inches which maximizes the efficiency of the use of space for housing a plurality of species of animals, most particularly, a plurality of mice and rats.

As discussed during the interview, a significant development in determining how those

skilled in the art viewed cage sizing was the advent of cage level barrier cages. One pioneer of this concept was Lab Products the Assignee of this Application. When the cage became the entire protective environment, such cages needed to be situated on racks, that needed to be housed in dedicated facilities. Building planners, protocol designers, the doctors in charge of studies, and cage designers became very aware that floor space within a cage was at a premium. More than thirty years ago, the Federal government enacted guidelines determining the minimum floor space that would be acceptable for different species and sizes of rodents in sanctioned animal studies. With this background, the industry, those skilled in the art, adopted standards in which more than one large rodent such as rats, hamsters and guinea pigs were housed in large cages having floor areas of 134 square inches or more. On the other hand, smaller rodents such as mice were housed in smaller cages having areas of 75 square inches or less. The common thinking of those skilled in the art in the industry prior to Applicants' breakthrough invention was that this is the way shelf space within racks and building space was maximized.

As shown by the issuance of the most recent patent to Michael Coiro, U.S. Patent No. 5,894,816, and assigned to Allentown Cageing Inc., a direct competitor of applicants' Assignee, rather than change the floor space for all rodents, the industry approach has been to maximize floor space for mice. This was done not by increasing floor space, but by changing the draft of the angle between the floor and the walls of the cage and measure the floor space at a height above the cage floor to obtain a more efficient 75 square inch floor space. This is not a cage which provides a more efficient overall floor space for mice and other species. The Coiro cage does not recognize the benefit or advantages of increasing the floor space beyond 75 square inches which is the precise solution offered by the instant claimed invention.

Therefore, the relied upon prior art is deficient in two ways. First, it is not a cage level barrier cage system. Therefore, it does not teach the special environment for which this invention is designed; namely an environment in which the entire environment is controlled by the cage size, materials, food and water supplying mechanisms and the like. Secondly, as conceded in the Office

Action, the prior art is silent as to the actual dimensions of the cage. However, as demonstrated by the level of skill in the art exemplified by the recently issued Coiro patent, no one in the industry has recognized the problem of marrying the requirements for all rodent species of interest to provide a common housing which maximizes the efficiency of the "real estate" available in the cage, rack and lab environment. The instant invention takes the cage design in an entirely different direction, to arrive at a cage level barrier cage having a true floor area between 80 and 110 inches, to maximize the efficiency and use of cage for housing rodents including a plurality of mice and a plurality of rats with a single type of cage. This is not mere design choice, but the result of recognizing a problem and inventing a solution thereto.

It was argued by the Examiners at the interview that a 75 inch or less cage could, in fact, house two rats, although uncomfortably. Therefore, it was considered that the prior art such as the Coiro cage incidentally anticipated the claimed invention. However, a reference cannot incidentally teach the invention if such a use is impermissible. An inoperable device or one which fails to achieve its intended result does not negate novelty and therefore does not anticipate. U.S. v. Adams et al, 383 U.S. 39, 86 S.Ct. 708, 714 (1966). (The prior art taught dangerous, inoperative, or unusable structures for a battery which court found did not constitute anticipatory prior art.)

The Federal guidelines specifically teach that housing a plurality of rats, a hamster or a guinea pig in a cage having less than the claimed 80 square inches is not in conformance with industry standards. Therefore, the Federal government will not sanction any animal studies having a plurality of rats housed in a cage sized for mice. Therefore, in effect, no one skilled in the art would look in that direction to design a multispecies rodent cage and therefore any argument to the contrary would be inappropriate.

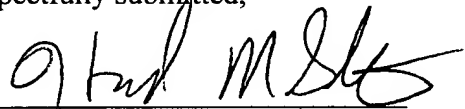
No prior art reference teaches the claimed range. Therefore, at best the argument is one of obviousness and it would not be obvious for one skilled in the art to look at cages not sanctioned for use by the industry to use the pre-existing cage as suggested.

Accordingly, in light of the above, Applicants submit that the invention as now claimed is a

novel departure from the prior art and applicants respectfully request the withdrawal of the rejection of claims 1-6, the only claims remaining in the Application, under 35 U.S.C. §102.

Applicants have made a diligent effort to place the application in condition for allowance. If the Examiner is unable to issue an immediate Notice of Allowance, she is respectfully request to telephone the undersigned attorney with a view towards discussing the outstanding issues.

Respectfully submitted,



Howard M. Gitten  
Registration No. 32,138  
Attorney for Applicants  
Stroock & Stroock & Lavan LLP  
180 Maiden Lane  
New York, New York 10038  
(212) 806-5400